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★ JAN 14 2004 ★

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

P.M. _____
TIME A.M. _____

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SIDNEY HAWKINS,

Petitioner,

-against-

**REPORT AND
RECOMMENDATION
OF UNITED STATES
MAGISTRATE JUDGE
A. SIMON CHREIN**

JOSEPH COSTELLO, Superintendent, Mid State
Correctional Facility,

00 CV 1343 (SJ)(ASC)

Respondent.
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By Order dated June 24, 2002, The Honorable Sterling Johnson Jr. referred the above-captioned matter to the undersigned magistrate judge for a Report and Recommendation concerning respondent's motion to dismiss petitioner's petition for habeas corpus pursuant to 28 U.S.C. 2254. By Report dated January 7, 2003, I found that the trial court erred when it precluded petitioner from questioning Police Officer McCormick about whether petitioner's acquaintance, Eddie-Ed told Officer McCormack that he, and not petitioner owned the gun that petitioner was convicted of possessing. I ordered a hearing limited to the question of whether Eddie-Ed admitted to owning the gun. However, when counsel appeared before me on May 15, 2003, I rescinded that hearing so that petitioner could develop further evidence of the existence of Eddie-Ed's statement. Subsequently, I sent a letter to counsel in which I set a deadline of October 31, 2003 for petitioner to produce such evidence. Because no evidence has been forthcoming, it is the

respectful recommendation of the undersigned that petitioner's petition for habeas corpus be denied. Any objections to the recommendations contained herein or contained in the Report issued January 7, 2003 must be filed with Judge Johnson on or before January 26, 2004. 28 U.S.C. § 636; Fed. R. Civ. P. 6, 72. Failure to object will preclude appellate review.

Dated: Brooklyn, New York
January 12, 2004



A. SIMON CHREIN
United States Magistrate Judge

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